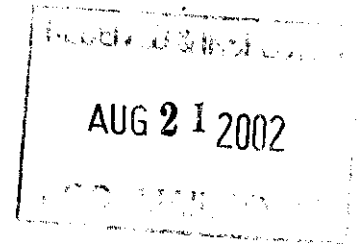


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)	
)	
Request for Waiver by)	
)	
Quincy School District 172)	File No. SLD-212425
Bloomington, Illinois)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45 ✓
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Associations, Inc.)	

ORDER

Adopted: August 8, 2002

Released: August 9, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Waiver Request filed by Quincy School District 172 (Quincy), Bloomington, Illinois, seeking waiver of the Commission's rules governing the schools and libraries universal service support mechanism.¹ Specifically, Quincy requests a waiver of the filing deadline for Funding Year 2000.² For the reasons set forth below, we deny Quincy's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that all applicants submit to the Schools and Libraries Division (SLD) of the Administrator a completed FCC Form 470, in which the applicants set forth their technological needs and the services for which they

¹ Letter from Jerry Steinberg, Telesolutions Consultants, on behalf of Quincy School District 172, to Federal Communications Commission, filed August 13, 2001 (Waiver Request).

² See Waiver Request. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (Administrator) may seek review from the Commission. 47 C.F.R. § 54.719(c). In prior years, Funding Year 2000 was referred to as Funding Year 3. Funding priorities are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 2000 and ended on June 30, 2001, previously known as Funding Year 3, is now called Funding Year 2000. The funding period that began on July 1, 2001 and ended on June 30, 2002 is now known as Funding Year 2001, and so on.

³ 47 C.F.R. §§ 54.501-54.503.

seeks discounts.⁴ In some cases, when an applicant has already successfully participated in the program and has a pre-existing contract, an applicant may not have to file a new FCC Form 470 for each funding year.⁵ In those cases, the previously filed FCC Forms 470 become what are known as "evergreen" 470 forms, serving for subsequent funding years while that contract is valid. This eases the administrative burden on both applicants and the Administrator.

3. All applicants -- including those with the evergreen FCC Forms 470 -- must file completed FCC Form 471 applications for each funding year. The FCC Form 471 is necessary to notify the Administrator of the services that applicants have ordered, the carrier with whom they have entered into agreements, and estimates of funds needed to cover the discounts to be given for eligible services.⁶ The Commission's rules require that applicants file completed FCC Forms 471 by the filing window deadline to be considered pursuant to the funding priorities for in-window applicants.⁷ The last day of the filing window for Funding Year 2000 was January 19, 2000.⁸

4. Quincy states that although it had filed successfully in previous years, it could not electronically file the FCC Form 470 in December 1999.⁹ Specifically, Quincy contends that Block 2 did not have any option appropriate for applicants such as Quincy who previously had filed an FCC Form 470 for the same contract.¹⁰ However, as noted above, such applicants are not required to submit a new FCC Form 470 and therefore it follows that there is no category on the electronic form directed at them.¹¹ Quincy states that it then verified with SLD representatives that it was not required to file that form.¹²

5. Quincy contends that, as a result, it could not have submitted an FCC Form 471 because that form must be preceded by the filing of the FCC Form 470.¹³ While it is true that the FCC Form 470 must be submitted before the FCC Form 471, it does not have to be submitted in the same filing year.¹⁴ As the instructions note, the FCC Form 470 submitted in a "previous

⁴ 47 C.F.R. § 54.504(b). Applicants with multi-year contracts in existence before July 11, 1997 are exempt from this requirement. See 47 C.F.R. § 54.511(b).

⁵ See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806, at 4 (September 1999) (FCC Form 470 Instructions).

⁶ 47 C.F.R. § 54.504(c); See also Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806, at 2-3 (September 1999) (FCC Form 471 Instructions).

⁷ 47 C.F.R. §§ 54.504(c), 54.507(g).

⁸ SLD website, Form 471 Window Closes January 19, 2000 at 11:59 PM ET, (December 6, 1999) <<http://www.sl.universalservice.org/whatsnew/121999.asp#fn1>> (Year 3 Window Notice).

⁹ Waiver Request at 1-2.

¹⁰ Waiver Request (attached screen printout of Block 2, dated December 20, 1999). In completing Block 2, online filers must choose from the following options: Tariffed services, month-to-month services with no written contract, services for which a new written contract is sought, and a multi-year contract for which no Form 470 has been filed in previous years.

¹¹ See FCC Form 471 Instructions at 2-3.

¹² *Id.*

¹³ Waiver Request at 2.

¹⁴ FCC Form 471 Instructions at 2-3; see also FCC Form 470 Instructions at 4.

filing year (for qualified existing multi-year contracts)” is sufficient to allow the filing of an FCC Form 471.¹⁵ When Quincy inquired as to why it had not received a funding commitment letter, SLD informed Quincy that Quincy had not filed its FCC Form 471 and thus had not complied with program requirements.¹⁶ Quincy subsequently filed its FCC Form 471 on September 27, 2000, approximately eight months after the filing window had closed.¹⁷ SLD rejected the application as late.¹⁸ Quincy requests waiver of the filing deadline from the Commission.¹⁹

6. Quincy states that, in addition to the items addressed above, several other factors led to its late submission of its FCC Form 471.²⁰ Quincy states there was a change in the FCC Form 470 that prevented Quincy from filing it and that contributed to the delay.²¹ Because Quincy should not have filed a new FCC Form 470 that funding year, we find that any claim of delay related to the filing of that form lacks merit.

7. Quincy also argues that it did not know about the deadline for the FCC Form 471 because the window was a new requirement.²² Quincy is incorrect. The program has always had a filing deadline for the FCC Form 471, and such deadlines are used to determine whether the applicants qualify for funding pursuant to the program’s funding priorities for in-window applicants.²³ The instructions and website material explained the deadline.²⁴ We find that this claim also lacks merit.

8. Quincy’s Waiver Request can be granted only if waiving the deadline is supported by a showing of good cause.²⁵ A deviation from a general rule is not permitted unless special circumstances warrant it and the deviation would better serve the public interest than strict adherence to the general rule.²⁶ We have consistently denied waiver requests based upon an applicant’s claim of its own misunderstanding of the rules.²⁷ We have also denied waiver

¹⁵ FCC Form 471 Instructions at 2-3.

¹⁶ Waiver Request at 2.

¹⁷ FCC Form 471, Quincy School District 172, filed September 27, 2000.

¹⁸ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jerry Steinberg, Quincy School District 172, dated July 26, 2001. Although the letter specifically rejected the application for having its signed “Certification Form” filed after the deadline, the entire application was filed outside the deadline. Therefore, we address only whether the application as a whole was submitted in a timely manner, not whether the certification page alone was submitted late.

¹⁹ *Id.*

²⁰ Waiver Request at 2.

²¹ *Id.*

²² *Id.*

²³ 47 C.F.R. §§ 54.504(c), 54.507(c).

²⁴ See FCC Form 471 Instructions at 2-3; See, e.g., FCC Form 471 Window Opens for Year 3 Applicants (November 10, 1999) <<http://www.sl.universalservice.org/whatsnew/111999.asp#window>>.

²⁵ See 47 C.F.R. § 1.3.

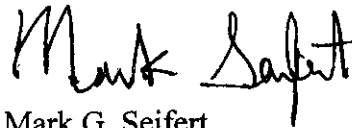
²⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (appeals court vacating a Commission decision to grant a waiver in a licensing issue, because it was arbitrary and capricious).

²⁷ *Request for Review by St. Mary’s Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.12-07-99.02000002, CC (continued....)

requests based upon an applicant's claim that SLD staff provided incorrect advice.²⁸ Therefore, we do not accept as sufficient Quincy's claims that it misunderstood the application process and that SLD representatives did not provide enough information. SLD reviews and processes thousands of applications each year, and therefore it is administratively necessary to place on the applicant responsibility for complying with the program's rules and procedures.²⁹ We therefore find that Quincy has failed to demonstrate special circumstances upon which its Waiver Request can be granted.

9. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by Quincy School District 172, Bloomingdale, Illinois, on August 13, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



by EAB

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

(...continued from previous page)

Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 12936, para. 5 (Com. Car. Bur. 2001) (denying a waiver request to the extent its late filing was due to misunderstanding of program rules).

²⁸ *Request for Review by Smackover Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-205330, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2963, para. 8 (Com. Car. Bur. rel. December 19, 2001).

²⁹ *See Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, para. 8 (Com. Car. Bur. 2000).